

technically correct.” Although SBSF failed to provide any evidence of RITOI in its petition, the Commission allowed SBSF an opportunity to cure the defect. Even though SBSF failed to provide any evidence of RITOI in its subsequent filings in this proceeding, thus continuing to render SBSF’s petition defective, the Allocations Branch still granted the petition. Finally, despite evidence of an alternative solution that would render moot the necessity of changing channels for WZMQ, the Allocations Branch ignored the proposed solution.

35. It is axiomatic that the Commission must treat similarly situated parties in the same manner and under the same standards. See Melody Music, Inc., 345 F.2d 730 (D.C. Cir. 1965). The Allocations Branch did not apply the same standard in processing the Joint Counterproposal and SBSF’s petition. As described above, the Allocations Branch applied a rigid standard of strict scrutiny to the Joint Counterproposal while applying a less stringent standard to SBSF’s petition. The Commission must reverse the MO&O, either by accepting the Joint Counterproposal or denying SBSF’s petition as procedurally and technically deficient for failing to provide any evidence of RITOI.¹²

¹² As discussed in 31, infra, a change in transmitter site would resolve the alleged RITOI problem.

V. ADOPTION OF THE JOINT COUNTERPROPOSAL PROVIDES
A UNIVERSAL RESOLUTION OF THIS PROCEEDING

36. Adoption of the Joint Counterproposal, as revised in the Joint Reply Comments, provides a universal solution of this proceeding resolving not only any RITOI problem that may actually exist but also permitting each party seeking an upgrade to provide wide area service. The Joint Counterproposal also complies with the Commission's mileage separation requirements. Most importantly, it would resolve this proceeding to the satisfaction of all parties, including SBSF, thereby conserving the Commission's resources and the resources of each party. Moreover, adoption of the Joint Counterproposal serves the public interest by permitting the parties to proceed with the provision of wide area service. Finally, the Joint Counterproposal resolves the alleged (but unproved) RITOI problem between WZMQ and WTCH. Under the Joint Counterproposal, everyone wins.

37. The Joint Counterproposal represents a preferential arrangement of allotments as defined in the allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982). Specifically, the Joint Counterproposal provides wide area service for four stations to over 1,400,000 listeners whereas SBSF's proposal provides wide area service for only one station. Consequently, the Joint Counterproposal is superior to SBSF's proposal. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986) (Section 307(b) of the Communications Act is

better served by granting proposals for three communities instead of one.

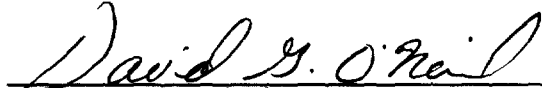
CONCLUSION

WHEREFORE, for the foregoing reasons, Palm Beach Radio Broadcasting, Inc., WSUV, Inc. and GGG Broadcasting, Inc. request that the Commission grant their Joint Counterproposal, as amended, as follows:

<u>Community</u>	<u>Present Channel</u>	<u>Proposed Channel</u>	<u>Call Sign</u>
Indiantown, FL	276C2	276C1	WPBZ
Naples, FL	276C3	292C3	WSGL
Fort Myers Villas, FL	292A	275C2	WROC
Clewiston, FL	292A	258A	WAFC
Jupiter, FL	258A	292C3	WJBW
Key Largo, FL	280C2	288C2	WZMQ
Marathon, FL	292A	237C2	WAVK
Key Colony Beach, FL	288C2	280C2	WKKB

The Commission should deny SBSF's petition as inferior to the Joint Counterproposal under the priorities established by the Commission for determining changes to the FM Table of Allotments.

**WSUV, INC.
GGG BROADCASTING, INC.**


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July 20, 1995

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rhonda R. Parrish, a secretary with the law firm of Rini & Coran, do hereby certify that I caused a copy of the foregoing "Application for Review" to be mailed, first-class, postage prepaid, this 20th day of July, 1995 to the following:

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